

From the Consul's Desk: H-1B Visas

Temporary skilled worker visas, also known as H-1B visas, continue to be the life blood of immigration between South India and the United States. Last year's totals showed that India is the most prolific user of the category; and those employees, as well as their spouses and extended family members, fuel the daily workload of the U.S. Consulate General in Chennai. Chennai alone interviewed over 38,000 H-1B visa applicants during the last fiscal year, almost a quarter of the worldwide total for this category.

It is no secret that there is an economic downturn in the United States, and worldwide. Each day, we read about U.S. companies that must reduce hiring, cancel projects or lay off workers, whether American citizens or visa-holders, due to this slowdown. However, the U.S. government has maintained the overall number of H-1B visas available, and there is no change in the program. There continue to be tens of thousands of H-1B visas available for foreign professionals to find legal employment in America.

There is some confusion regarding the U.S. companies that received economic stimulus funds from the U.S. Government. Some stories have claimed that there is a "ban" on H-1B visas for those companies that needed public funds. That is absolutely not true. In fact, such firms simply have to attest that they attempted to employ U.S. workers first before seeking a foreign applicant, and will not disadvantage any American workers by doing so. Further, in the last fiscal year, this legislation would have affected just a tiny percentage of H-1B applicants – only about one percent. For the vast majority of prospective H-1B professionals, and all Indian companies, this legislation is a non-issue.

When looking for employment in the United States, be wary of companies that charge fees or are mysterious about your future projects. Some applicants pay thousands of U.S. dollars in "immigration" or "processing" fees to the U.S. company, or its local agent, just for the H-1B petition. This is illegal, and a sign that the company may not actually have a job available.

Too many applicants do not know what project or assignment they will have with the new employer. This invariably causes problems during the visa interview, and can delay the issuance of your visa by months – or cause it to be denied. Petitioning companies – including technology consultancy firms -- must be able to provide a specific work itinerary, to prove that a productive job actually exists. Applicants can make the process smoother by asking detailed questions of prospective employers before the interview and have a clear idea of their future duties.

Unfortunately, some of our applicants try to sidestep the rules and gain entry to the U.S. through illegal means. Many times, a visa consultant or recruiter entices a potential applicant to buy a false academic degree or work experience letters. This can only end badly for the applicant. The applicant typically spends lakhs of rupees on a false document, only to be caught by Consulate officials and face a permanent ban on U.S. travel or arrest by

the police. The Consulate takes a strict view against document fraud, and even a single offense can bring serious consequences.

Further, a U.S. employer is required to pay its H-1B employees their full promised salary whether or not the employee is currently working on a project. The practice of discontinuing payment salaries when the employee is not assigned to a project, commonly known as “benching,” is not permitted. If this has happened to you, the U.S. Department of Labor can help you file a complaint and get the wages you deserve. Contact them at www.wagehour.dol.gov.

An H-1B professional has the same rights to fair treatment, similar wages and fringe benefits as does an American citizen employee. Recently, U.S. authorities brought criminal charges against an American company that used false documentation to pay reduced wages to its Indian H-1B employees. Since H-1B professionals can only work for their petitioning employer, these victims are put at serious financial risk. Increased enforcement, as well as informed applicants, reduces the chances of labor abuse and fraud in the skilled worker visa program.

The U.S. Consulate hopes that by knowing and taking a stand for their rights, H-1B workers will continue to be a vibrant and dynamic force in strengthening U.S.-Indian relations.

U.S. Consulate General: <http://chennai.usconsulate.gov>